

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

STATE OF WASHINGTON)	
DEPARTMENT OF CORRECTIONS)	Case No. 00-3-0007
AND DEPARTMENT OF SOCIAL)	
AND HEALTH SERVICES,)	<i>(DOC/DSHS)</i>
)	
Petitioners,)	
)	
v.)	
)	
CITY OF TACOMA,)	finding of compliance [Re: DOC
)	portion of case – work release
Respondent,)	facilities]
)	

I. background

On November 20, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 00-3-0007 (*DOC/DSHS v. Tacoma*). The FDO remanded the Ordinance 26565 back to the City of Tacoma (**City**), and directed the City to take appropriate legislative action to comply with the requirements of the GMA as it applied to both juvenile community facilities and work release facilities. The FDO established separate compliance schedules for the Department of Social and Health Services (**DSHS**) (juvenile correction facilities) and the Department of Corrections (**DOC**) (work release facilities) portions of the Case. A compliance hearing date was established for DOC, but not for DSHS.

On January 30, 2001 and February 8, 2001, the Board amended the Compliance Schedule and Compliance Hearing date for Case No. 00-3-0007. [\[1\]](#)

On February 5, 2001, following a compliance hearing, the Board issued an Order “Finding of Partial Compliance [Re: DSHS portion of case – juvenile correction facilities].” This Order concluded the DSHS portion of the case before the Board.

Regarding DOC and work release facilities, the FDO, as amended, provided in relevant part:

2. In order to comply with the provisions of RCW 36.70A.200, .210

(3), .035, .106, .130 and .140. as set forth and interpreted in this FDO, as they apply to *work release facilities*, the Board directs the City of Tacoma as follows:

- By no later than **4:00 p.m. on March 19, 2001**, the City **shall** take appropriate legislative action to comply with the requirements of the GMA, as set forth in this FDO, regarding work release facilities.
- By no later than **4:00 p.m. on March 26, 2001**, the City **shall** file with the Board an original and four copies of a Statement of Actions Taken to Comply with this Final Decision and Order (the **SATC**) and shall simultaneously serve a copy on Petitioner DOC.
- By no later than **4:00 p.m. on April 9, 2001**, Petitioner DOC *may* file with the Board an original and four copies of a Memorandum in Response to the SATC, and shall simultaneously serve a copy on the City.
- By no later than **4:00 p.m. on April 13, 2001**, the City *may* file with the Board an original and four copies of a Reply Memorandum, and shall simultaneously serve a copy on Petitioner DOC.
- By no later than **4:00 p.m. on April 17, 2001**, Petitioner DOC *may* file with the Board an original and four copies of a Rebuttal Memorandum, and shall simultaneously serve a copy on the City.

Pursuant to RCW 36.70A.330(1), the Board gives Notice of Compliance Hearing in this matter to be held at **10 a.m. on Thursday, May 10, 2001** in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle.

DOC/DSHS v. City of Tacoma, CPSGMHB Case No. 00-3-0007, Final Decision and Order (November 20, 2000), at 17; as amended by, “Notice of Change in Compliance Schedule,” (January 30, 2001), at 2; and further amended by, “Notice of Second Change in Compliance Schedule,” (February 8, 2001), at 2.

On March 26, 2001, the Board received “Statement of Actions Taken” (**SATC**). The SATC indicated that the City had adopted Substitute Ordinance No. 26783 in order to comply with the terms of the Board’s FDO regarding work release facilities or centers.

On April 9, 2001, the Board received DOC’s “Memorandum in Response to Statement of Actions Taken to Comply by City of Tacoma” (**DOC Response**).

On April 13, 2001, the Board received “Reply Memorandum of City of Tacoma” (**Tacoma Reply**).

On April 17, 2001, the Board received “DOC Rebuttal” (**DOC Rebuttal**).

On May 10, 2001, the Board held the Compliance Hearing (**CH**) in Case No. 00-3-0007, [DOC portion of case – work release facilities], at the Board’s offices. Present for the Board were Board Members Lois H. North, Joseph W. Tovar and Edward G. McGuire, Presiding Officer. Brian Norkus, Legal Intern to the Board, was also present at the Board’s office. Kyle Crews represented the City of Tacoma. Talis Abolins represented DOC. Robert Lewis of Robert Lewis and Associates, Tacoma provided Court Reporting services.

II. applicable law and Discussion

In the FDO, the Board found that the City of Tacoma’s adoption of Ordinance 26565 did not comply with the provisions of RCW 36.70A.200, .210(3), .035, .106, .130 and .140, as they applied to *work release* facilities. In order to comply with the terms of the Board’s FDO, the City adopted Substitute Ordinance No. 26783 (**Ordinance**) which, once again, addressed work release facilities or centers. DOC does not challenge the City’s compliance with RCW 36.70A.035, .106, .130 or .210(3) in the new enactment. DOC Response, at 1-13; however, DOC continues to challenge Substitute Ordinance No. 26783’s compliance with RCW 36.70A.200. DOC Response, at 4-11.

DOC contends that the new ordinance precludes the siting of work release facilities in the City by: 1) categorically excluding them from every zoning district except for the M-1 (light industrial district), M-2 and M-3 (heavy industrial districts), CIX (commercial industrial mixed use district) and UCX (urban commercial mixed use district) where suitable land is not available; 2) restricting the capacity of work release facilities^[2] without sufficient justification and making it financially infeasible for DOC to site work release facilities; and 3) it contains a 600’ buffer and a ¾ mile dispersion zone. DOC Response, at 5-9, 9-10, and 10-11, respectively. DOC also asks the Board to invalidate the Ordinance, alleging it substantially interferes with RCW 36.70A.020(7) - Goal 7.^[3] DOC Response, at 12.

RCW 36.70A.200 provides:

(1) The comprehensive plan of each county and city that is planning under this chapter shall include a process for identifying and siting essential facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.

(2) The office of financial management shall maintain a list of those essential state

public facilities that are required or likely to be built within the next six years.^[4] The office of financial management may at any time add facilities to the list. *No local comprehensive plan or development regulation may preclude the siting of essential public facilities.*

(Emphasis supplied).

The Board has defined “preclude” as “render impossible or impracticable.” *Children’s Alliance v. City of Bellevue*, CPSGMHB Case No. 95-3-0011, Final Decision and Order, (Jul. 25, 1995), at 11. The Board has also defined “impracticable.” “Impracticable” is defined as “not practicable: incapable of being performed or accomplished by the means employed or at command.” *Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order, (Aug. 13, 1997), at 8, citing: *Merriam Webster’s Collegiate Dictionary*, 584 (10th ed. 1996). Thus, the question for the Board in this compliance proceeding is whether the provisions of Substitute Ordinance No. 26783 *continue* to create a regulatory scheme that renders DOC *incapable of siting work release facilities within the City with the means employed by and within DOC’s command.*

DOC argues that the Ordinance “still does not *provide a practicable opportunity* to site work release facilities.” DOC Response, at 5, (emphasis supplied). However, this is not the measure of preclusion as defined above.

In support of the Ordinance, the City conducted an inventory of parcels within each of the zones where work release facilities would be permitted. The inventory indicated that 289^[5] parcels over 1 acre in size, developed and vacant, would be completely buffered per the Ordinance.

DOC Response, Ex. 12. Just considering the “vacant” parcels yielded 79^[6] parcels over one-acre and completely buffered per the Ordinance.

DOC disputed these numbers and had an inventory of its’ own prepared by a consultant. This analysis looked at *parcels over two-acres*^[7] and also applied the buffering requirements of the Ordinance. Additionally, this inventory eliminated: parcels that were partially within setbacks for sensitive areas; parcels partially within 200-foot shorelines setback; parcels identified as hazardous waste sites; parcels less than 2-acres outside of wetland areas; parcels with infeasible shapes; and parcels located under a freeway. The net result of DOC’s inventory yields 40 parcels meeting the criteria of the Ordinance **and** the additional criteria (not required by the Ordinance) used in the consultant screening. The consultant concludes by suggesting the viability of the remaining 40 parcels must be discounted by likelihood of contamination following environmental assessment, lack of suitable bus service and appropriateness of zones for residential uses. DOC

Response, Ex. 10, Item 2 – Parametrix, Inc. Technical Memorandum, dated 3/6/01, at 4, 5 and 7.

While DOC's analysis and inventory may be construed as going to the *practicable opportunities* for siting work release facilities, it does not demonstrate preclusion. The DOC analysis employed not only the requirements of the Ordinance, but other factors that are not required by the Ordinance. Nonetheless, DOC identified 40 parcels where work release facilities could be sited in the City of Tacoma. DOC is not incapable of siting work release facilities in the City of Tacoma under the terms of Substitute Ordinance No. 26783. The Board notes that if DOC were to consider smaller sites, accommodating fewer than 40-60 residents, more sites would likely be available within the City of Tacoma under the present Ordinance.

Considering the terms of the Ordinance and the fact that the City of Tacoma presently houses five work release facilities^[8], the Board concludes that Substitute Ordinance No. 26783 does not preclude the siting of essential public facilities – work release facilities – and complies with the provisions of RCW 36.70A.200. Therefore, the Board enters a **Finding of Compliance** for the City of Tacoma.

III. FINDING OF COMPLIANCE

Having reviewed its November 20, 2000 FDO, the Statements of Actions Taken to Comply, provisions of the GMA, briefing provided by the parties, the Board finds that, regarding *work release facilities*, the City of Tacoma has **complied** with the requirements of the GMA, as set forth in the Board's November 20, 2000 FDO pertaining to work release facilities. Therefore, the Board issues this **Finding of Compliance** to the City of Tacoma in that portion of CPSGMHB Case No. 00-3-0007 (*DOC/DSHS v. City of Tacoma*), related to *work release facilities*.

So ORDERED this 22nd day of May, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Presiding Officer

Lois H. North

Board Member

Joseph W. Tovar, AICP
Board Member

NOTICE: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a petition for reconsideration pursuant to WAC 242-02-832.

[1] *See*: “Notice of Change in Compliance Schedule and Hearing,” January 30, 2001 and “Notice of Second Change in Compliance Hearing [DOC portion of case – work release facilities],” February 8, 2001.

[2] The Ordinance allows no more than 15 residents in the UCX zone, 25 residents in the CIX, M-1 and M-2 zone, and 75 residents in the M-3 zone. Ordinance 26783, Sec. 3., at 8, and Sec.4., at 9.

[3] Goal 7 provides: “Permits. Applications for both state and local government permits should be processed in a timely and fair manner to insure predictability.” At the HOM, DOC indicated it did not have any permits pending before the City.

[4] At the HOM, DOC indicated that it had no work release facilities noted on the OFM list that would be required or likely to be built within the next six years. DOC indicated these decisions were driven by budgetary considerations, and noted OFM could amend the list at any time.

[5] An additional 150 parcels less than one-acre, developed and vacant, were identified, but the buffering requirements were not applied to these parcels. DOC Response, at Ex. 12. *See also*, Tacoma Reply, at Ex. A [The “Draft Proposal” showed 331 parcels completely buffered over 1-acre and 183 less than one-acre.]

[6] Again, 34 parcels less than one-acre were not included.

[7] At the HOM, DOC indicated two-acres sites were typical for work release facilities housing between 40 – 60 residents.

[8] Progress House (75 residents), located on 6th Avenue near SR 16; Lincoln House and Rap House (approximately 20 residents each), located in the 3700 block of Yakima Ave; and two federal work release facilities (approximately 20 residents each), located in downtown Tacoma.